

**United States District Court
District of Massachusetts**

10/22/2004 10:10 AM 58

Paul W McCree, Jr.,)	
)	
Plaintiff)	Civil Action NO. 04-11334JLT
)	
v.)	
)	
Pension Benefit Guaranty)	
Corporation,)	
)	
Defendant)	

Motion for Supplemental Pleading

to the

**Memorandum of Law in Support of Plaintiff's
Motion for Summary Judgment**

I Nature of Pleading

This pleading is made to support the Plaintiff's Motion for Summary Judgment. It corroborates the proof of the Plaintiff's allegations

II. Basis for Supplemental Pleading

The conjunction, or, is used in both of the statements in dispute by the parties. Namely, it's used in the definition of Compensation provided in the Adoption Agreement (1984) Article I., 1.5 (d, e, f) and in the phrasing, reduced or offset, referred by the Defendant as used in the Plan and elsewhere to signify that offset means reduced.

1.0 Definitions:

The Complete Oxford Wordfinder (1960) lists several meanings and uses of the conjunction, or. The meanings listed as 1a. and 4 are significant and material to the case..

“ 1a: introducing the 2nd of two alternatives; “

“ 4: introducing a synonym or explanation of a preceding word; “

III Application to the Dispute

1.0 In the Adoption Agreement (1984), the meaning of Compensation for any Participant, is provided by the choice of alternatives, (e) actually paid; or (f) paid and accrued; (e) is the option selected in the Plan.

This is an example of the meaning and use of the definition, 1a. For with the selection of (e), (f) is introduced as the 2nd alternate of the two alternates. Thus, the selected meaning of Compensation for any Participant is the **choice, (e) or (f)**. This makes sense because in the working experience for any Participant compensation is not an hypothetical. It can, in fact, be either actually paid or paid and accrued. Some Participants may be actually paid but others may not. Consequently, it is fair just and reasonable for the meaning of Compensation for any Participant to remain an open choice to be resolved individually for any Participant at the determination of the benefit Otherwise, it's certain that some will be denied the full monthly benefit for which they are entitled.

But, the Defendant, apparently ignores the meaning and use, here, of the conjunction, or, and interprets the selected choice in the Adoption Agreement (1984) to mean actually paid. Thereby, the Plaintiff's entitled compensation for back pay due for accrued hours of service is discounted. As a result the Plaintiff's Average Monthly Earnings have been underestimated.

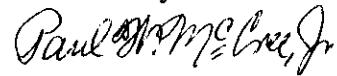
2.0 The phrasing, reduced or offset is an example of the meaning and use of the definition (4). Here, the conjunction, or, is used to introduce the word, offset, as a synonym or explanation of the word, reduced. It can be inferred from the phrase, reduced or offset, that offset means reduced. But, this inference is false because by definition offset and reduce are not synonyms. The correct inference is that reduced is synonymous with the phrase, offset by reduction or subtraction, or the words, minus or less.

But, the Defendant apparently does infer from the phrasing, reduced or offset, that offset means reduced. Based on this false inference, the Defendant has misinterpreted the phrase, offset by, in the formula for the monthly retirement benefit in the Adoption Agreement (1984) to mean reduced or minus. By this error coupled with the underestimated average monthly earnings, the Plaintiff's benefit has been miscalculated as charged.

III Application to the Motion for Summary Judgment

These findings concisely and precisely prove the Plaintiff's allegations and support the Plaintiff's Motion For Summary Judgment..

Submitted by:



Paul W. McCree, Jr.

Dated: 10/20/2004